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6 IN THE UNITED STATE DISTRICT COURT  
 7 FOR THE DISTRIC OF NEVADA

8  
 9 MARISELA LEON MARTINEZ

CASE NO. 2:17-cv-02454-JCM-GWF

10 Plaintiff.

11 vs.

12 MGM GRAND HOTEL LLC,  
 13 dba MGM GRAND

Defendant(s).

14  
 15  
 16  
 17  
**RESPONSE TO THE OPPOSITION OF THE DEFENDANT  
 SO THAT THE CASE OF DISCRIMINATION BASED ON  
 THE AMERICANS WITH DISABILITIES ACT (ADA)  
 BE RECONSIDERED AND RE-OPENED.**

18 COMES NOW, Plaintiff Marisela León Martínez, in her capacity as Plaintiff pro se, moves  
 19 to Response to the Opposition of the Defedant so that the Case of Discrimination based on The  
 20 Americans with Disabilities Act (ADA) be Reconsidered and Reopened. This Motion is based  
 21 on the following Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

22 In the month of June (June 12, 2018), we filed a motion requesting that our case of  
 23 discrimination based in Americans with Disabilities Act (ADA) be reconsidered and reopened.

24 Our considerations for such a request are centered on the fact that we are dealing with a  
 25 case in which the plaintiff has presented a large number of facts and evidence supporting  
 the claim and the defendant at no time has been able to present any evidence that  
 demonstrates otherwise, or at least provide some evidence or proof that confirms that the  
 defendant complied with the provisions of the Americans with Disabilities Act (ADA), as was  
 his responsibility.

26 We must not forget that in this case we are dealing with a problem of greater cause and that  
 27 it is a Company that, without respect to the provisions of the federal law in protection of  
 injured workers, committed discrimination, used retaliation, acted in a manner

1 premeditated and ill-intentioned against a disabled worker and all that appears well argued  
 2 and widely supported with evidence in the content of the claim.

3 We believe that we do not need to discover and present any new evidence, since the existing  
 4 ones have never been denied, dismissed or annulled, from our point of view these are  
 5 circumstances that deserve reconsideration, the case was dismissed and closed for the  
 6 absence of a response to the motion to dismiss, but at no time for frivolity, for declaring a  
 7 claim on which it is not possible to establish relief, or for lack of a legal interest, his  
 8 arguments are strong and well-founded for nothing contains delusional factual. The court  
 9 stated from beginning that our complaint sufficiently stated a Claim for Discrimination  
 10 under the ADA and that it could proceed with that Claim.

11 The defendant found in the absence of a timely response to his motion to dismiss the case  
 12 an escape point to which he clings desperately and intends that this case ends without  
 13 analyzing its main and most important content.

## 10 II. BACKGROUND.

11 Defendant filed a Motion to Dismiss Plaintiffs Complaint ("Motion to Dismiss") on March  
 12 17, 2018, and argued that the Court should dismiss the Complaint for failure to state a claim  
 13 upon which relief can be granted **ECF No. 8.**

14 We failed to provide any response to the Motion.

15 On May 17, 2018, Defendant filed a notice of non-opposition notifying the Court that Plaintiff  
 16 failed to file an opposition, or otherwise respond, to Defendant's Motion to Dismiss **ECF**  
**No. 13.**

17 On June 5, 2018, the Court entered an Order granting Defendant's Motion to Dismiss and  
 18 dismissing Plaintiffs complaint without prejudice **ECF No. 14.** A Judgment was entered in  
 19 favor of Defendant, and the case was closed on June 5, 2018. **Judgment, ECF No. 15.**

20 On June 12, 2018, we filed the "Motion so that the Case of Discrimination based on the  
 21 Americans with Disabilities Act (ADA) be Reconsidered and Re-Opened". **Plaintiffs**  
**Motion(s), ECF Nos. 17 and 18.**

22 Our request was based among other things on very specific points such as:

- 23 1. We trust in the merits of our case.
- 24 2. In no way was it our intention to show indifference to compliance with LR 7-2 (d),  
     (in the absence of an opposing party to present points and authorities in response to  
     any motion, except a motion under Fed. R. Civ. P 56 or a motion for attorneys' fees,  
     constitutes a consent to the granting of the motion) would be totally absurd, nor was  
     it our intention to show disrespect for any federal law or local rule in our State, all  
     of which conspires against the efforts to defend our rights that we have been doing  
     for more than 5 years.
- 25 3. At no time in our complaint there is any action that can be considered frivolous or  
     malicious legally, on the contrary in all our arguments is perceived the clarity and

logical coherence of who speaks with the truth and has the evidence to prove it, everything is explained with total rationality and credibility.

4. In any case, we call attention to the case that concerns us. It is a lawsuit against someone who has intentionally and maliciously ignored compliance with the provisions of a Federal Law that protects all persons with some type of disability.
5. We believe that it is too much damage to allow that a fact of this nature to continue without receiving the deserved response from the Law, if this happens we may be exposing thousands of workers to suffer the same treatment and go through the consequences for which today I cross, but worse still, continue to violate and show indifference to compliance with the laws that protect injured people.

### **III. STANDARD FOR MOTION FOR RECONSIDERATION.**

When in the content of a claim a plaintiff presents such a high number of facts and evidence and none of them is denied or in any way questioned by the defendant, there is no doubt that we are faced with extraordinary and unusual circumstances that would justify any relief, since that it is evident that truth and reason are overwhelming, taking into account the seriousness of the offense committed by the defendant and its inability to show facts and credible and convincing evidence, which is also ratified by the personnel involved in the consummation of the fault, has no recourse other than lying or trying to confuse. In addition, the dismissal and closure of the case has nothing to do with the lack of value or credibility of the facts and evidence already presented in the claim that situates our case in a very special circumstance.

We consider that the reconsideration and reopening of our case, is convergent with the finality of obtaining a fair resolution of the case, besides that it would be very well seen in the interest of the preservation of the judicial resources.

### **IV. ARGUMENT.**

The request for reconsideration that we have presented for nothing is based on the presentation of new additional arguments , which could reasonably have been exposed in the opposition to the motion of dismissal, such statement is erroneous, if someone carefully observes the content of our request for reconsideration, it will be noted that at all times we focus on do noting the merit of our case, supported by the fact that we present arguments and irrefutable evidence, we refer to issues concerning the lack of interest shown by the company at the time of my reorganization having consider my disability and allow me to return to productive work, especially because the Company can do so without undue hardship. Likewise, we mention the fact that the granting of a Relief is certainly possible and justified.

We also discussed something related to the support that should have existed on behalf of the company to my medical needs as an employee for 9 consecutive years, that would allow me a reasonable accommodation due to the disability, and that should have been a priority for the Defendant not only because it is the Law, but because it is the right thing.

As can be noted at all times what is intended is to note the merit and value of our complaint that justifies a reconsideration and reopening of our case, and we always do so by citing arguments already raised above, here there is no additional argument that should have been included in opposition to the Motion to Dismiss as the defendant seeks to see, "once again trying to confuse."

At no time have we tried to justify or evade our responsibility for the lack of response to the motion of dismissal filed by the defendant, although we have made reference to some realities that imply otherwise, aware that the law was applied fairly when our case was dismissed and closed, but for the record this happened due to the absence of a response in time to the dismissal motion.

The motion of the defendant to dismiss the case was guaranteed in a legal and fair manner, the rule of procedures was applied as established, however in our view our case requires a resolution that can be justified by the exercise of the reason, for ensure all parties a fair opportunity to comply with the provisions of the law. We will continue to insist on the merit and value of our case, because we believe that the rules should also favor the development of the merits of the cause to the fullest.

We are convinced that the merit of our case has given us the opportunity to present evidence and arguments with reason and intelligence that will serve the court to decide our claim rightly.

We appeal to common sense so that our case is not decided for reasons unrelated to its merits and that the fairness in this claim is governed by rules that are designed, interpreted and implemented to give the parties the maximum opportunity to participate in the configuration of a result.

#### IV. CONCLUSIÓN.

For the above-stated reasons, Plaintiff's Motion for Reconsideration and Re-opened should be granted.

Date: July 06, 2018.



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